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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARCIE HAMILTON,

Plaintiff,

vs.

JUUL LABS, INC.,

Defendant.

Case No. 3:20-CV-3710-EMC

**PLAINTIFF MARCIE HAMILTON'S
OPPOSITION TO REQUEST FOR
JUDICIAL NOTICE; OBJECTION TO
DEFENDANT JUUL LABS, INC.'S
REPLY EVIDENCE IN SUPPORT OF
ITS MOTION TO DISMISS AND
MOTION TO STRIKE; DECLARATION
OF CHRIS BAKER**

Date: August 20, 2020
Time: 1:30 p.m.
Dept: Courtroom 5, 17th Floor
Judge: Honorable Edward M. Chen

In connection with its reply brief in support of its motion to dismiss and motion to strike, defendant JUUL Labs, Inc., submitted a supplemental request for judicial notice and another declaration, this time from its Vice President, Global Employment Law, Miray Gweon (ECF No. 17-1, 17-2). Plaintiff objects to these improper documents and testimony under Local Rule 7-3 and it provides the following opposition to JUUL's Request for Judicial Notice.

1 Plaintiff is entitled to oppose Defendants' Request for Judicial Notice to the extent it make
 2 new arguments in support of its motion to dismiss. In addition, Local Rule 7-3(d) provides: "If
 3 new evidence has been submitted in the reply, the opposing party may file within 7 days after the
 4 reply is filed, and serve an Objection to Reply Evidence, which may not exceed 5 pages of text,
 5 stating its objections to the new evidence, which may not include further argument on the
 6 motion."

7 Plaintiff hereby makes the following objections to JUUL's reply evidence, and she sets
 8 forth the following brief opposition to JUUL's request for judicial notice.

9 1. The Court should not consider arguments made for the first time in reply. *E.g.*
 10 *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). JUUL improperly relies on new evidence
 11 and makes new arguments in its reply.

12 2. Exhibit A to the Gweon Declaration is also not the separation agreement
 13 referenced in the Complaint, which was provided to Hamilton in March 2019 in exchange for her
 14 continued employment through April 2, 2019. (Complaint ¶ 36). Exhibit A is a redline that,
 15 according to Gweon, was sent on April 3, 2019 – **after** JUUL's proposed separation date of April
 16 2, 2019 had already passed. The Court cannot judicially notice a redlined proposal not referenced
 17 in the Complaint. Regardless, according to the Gweon's declaration, the redline itself
 18 demonstrates JUUL's clear intent to violate the law. For example, the proposed redline removed
 19 and added language in sections 4(d), 6, and 7 to help render the agreement legal and in
 20 compliance with Government Code § 12964.5. Gweon asserts that JUUL rejected these changes.
 21 (See Gweon Declaration ¶ 2 ("Mr. Baker's proposed changes were not accepted."))

22 3. The Court cannot judicially notice Ms. Gweon's testimony. The Complaint makes
 23 no mention of the negotiations concerning the separation agreement, the full context of which
 24 would further support Plaintiff's claims. Adding a third version of a Separation Agreement and
 25 Release (1. That to which the Complaint *actually* refers, as described in the Baker Decl. (ECF #
 26 15-1); 2. Moore Decl. Ex. B; and 3. Gweon Decl. Ex. A) into the record also adds further
 27 questions as to the authenticity of the documents JUUL requests the Court to judicially notice.
 28 This confirms that this matter cannot be resolved at the pleading stage. *Williams v. County of*

1 *Alameda*, 26 F.Supp.3d 925, 935–936 (N.D. Cal. 2014) (“The Court finds that the evidence
2 submitted by Defendants is more appropriately considered after the parties have had an adequate
3 opportunity to fully develop the factual record.”).

4 4. Plaintiff is not the one obfuscating the issues. JUUL has refused to seek judicial
5 notice of its corporate confidentiality policies (though it knows what they are) and it has now
6 provided two different separation agreements to the Court, neither of which is the agreement
7 referenced in the Complaint. It is not Plaintiff’s obligation – at the pleadings stage -- to submit
8 evidence to the Court. Plaintiff need only provide “a short and plain statement of the claim
9 showing that the pleader is entitled to relief.” F.R.C.P 8(a). She has done so in her Complaint.

10 **CHRIS BAKER DECLARATION**

11 Furthermore, I, Chris Baker, declare as follows:

12 1. I am counsel of record for plaintiff Marcie Hamilton in this case. I have personal
13 knowledge of the facts in this declaration.

14 2. The Complaint in this action does not refer to the document attached to Ms.
15 Gweon’s Declaration as Exhibit A. The Complaint also does not reference the settlement
16 negotiations of which Exhibit A was a part.

17 3. Exhibit A to the Gweon Declaration is not the document referenced in the
18 Complaint as the severance agreement, and it is certainly not indisputable that Exhibit A is the
19 severance agreement that was presented to Plaintiff in March 2019. On its face, Exhibit A is, in
20 fact, not the agreement JUUL offered to Plaintiff in exchange for her continued employment
21 through April 2, 2019.

22 I declare, under penalty of perjury, that the foregoing is true and correct. Executed this
23 31st day of July, 2020, in San Francisco, California.

24 BAKER CURTIS & SCHWARTZ, P.C.

25
26 By: /s/ Chris Baker

27 Chris Baker
28 Attorneys for Plaintiff
MARCIE HAMILTON